

KAPLAN KIRSCH ROCKWELL

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May 6, 2008

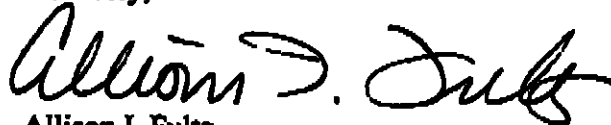
E-Filing
Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Union Pacific Railroad Company – Abandonment and Discontinuance of
Trackage Rights Exemption – in Los Angeles County, CA*
STB Docket No. AB-33 (Sub-No. 265X)

Dear Madam:

I am enclosing for filing (1) the Reply of Los Angeles County Metropolitan Transportation Authority to James Riffin's "Notice of Intent to File an Offer of Financial Assistance" and James Riffin's "Petition to Toll Date an Offer of Financial Assistance Must be Filed by" and (2) Los Angeles County Metropolitan Transportation Authority's Petition for Authorization to Late File a Reply and Reply to Union Pacific Railroad Company's Notice of Exemption in the above referenced proceeding. This is an electronic filing in accordance with the Board's rules.

Sincerely,



Allison I. Fultz

Enclosures

cc: Parties receiving service of application

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Denver • New York • Washington, DC

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. AB-33 (Sub-No. 265X)

**UNION PACIFIC RAILROAD COMPANY –
ABANDONMENT EXEMPTION
IN LOS ANGELES COUNTY, CA
(SANTA MONICA INDUSTRIAL LEAD)**

**REPLY OF
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
TO
JAMES RIFFIN'S "NOTICE OF INTENT TO FILE AN OFFER OF FINANCIAL
ASSISTANCE"
and
JAMES RIFFIN'S REQUEST FOR EXTENSION OF TIME**

Communications with respect to this document
should be addressed to:

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Docket No. AB-33 (Sub-No. 265X)

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ABANDONMENT EXEMPTION
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**REPLY OF
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TO
JAMES RIFFIN'S "NOTICE OF INTENT TO FILE AN OFFER OF FINANCIAL
ASSISTANCE"
and
JAMES RIFFIN'S REQUEST FOR EXTENSION OF TIME**

On March 19, 2008, Union Pacific Railway Company ("UP") filed a Notice of Exemption in this proceeding (the "UP NOE") seeking an abandonment of service over 0.08 mile of the Santa Monica Industrial Lead from Milepost 485.61 to Milepost 485.69 (the "UP Segment"), and a discontinuance of trackage rights over 0.31 mile of track owned by the Los Angeles County Metropolitan Transportation Authority ("LACMTA"), a public entity, from Milepost 485.69 to Milepost 485.00 (the "LACMTA Segment"), a total distance of 0.39 miles in the City of Los Angeles, Los Angeles County, California.

On April 16, 2008, James Riffin filed a "Notice of Intent to File an Offer of Financial Assistance" (the "Riffin NOI") and a "Petition to Toll Date an Offer of Financial Assistance Must be Filed by" (the "Riffin Petition") in this proceeding.

Pursuant to 49 U.S.C. §10904 and 49 CFR §1152.27(c), LACMTA hereby replies to the Riffin NOI and Riffin Petition.¹ As the owner of the LACMTA Segment, LACMTA will participate in this proceeding in order to ensure that its interests are represented before the Board. LACMTA intends to file a Notice of Exemption pursuant to 49 C.F.R. §1152, Subpart F, in the near future for authority to abandon the LACMTA Segment. LACMTA's proposed Notice of Exemption will relate to LACMTA's 0.31 mile of track, which is the majority of the rail property that is the subject of the instant proceeding. LACMTA opposes the Riffin NOI and Riffin Petition for the reasons set forth below.

REPLY TO RIFFIN NOI AND RIFFIN PETITION

LACMTA's predecessor agency, the Los Angeles County Transportation Commission ("LACTC") acquired the LACMTA Segment from Southern Pacific Transportation Company ("Southern Pacific"), UP's corporate predecessor, in 1990. Southern Pacific retained the exclusive right to provide freight service on the LACMTA Segment. Southern Pacific retained ownership of the UP Segment, and UP subsequently succeeded to Southern Pacific's interest. As a result of the transfer of the LACMTA Segment from Southern Pacific to LACTC (and subsequently LACMTA) acquired the real property associated with the LACMTA Segment, and Southern Pacific retained all operating rights and the primary common carrier obligation. The I.C.C. concluded at the time that LACMTA had acquired a residual common carrier obligation as the owner of the physical assets of the LACMTA Segment, over which service was being provided by Southern Pacific. *So. Pac. Trans. Co. – Abandonment Exemption – Los Angeles Co., CA*, 8 I.C.C.2d 495, 508 and n.13 (1992) ("SP Abandonment I"), *pet. for reconsideration denied*, *So. Pac. Trans. Co. – Abandonment Exemption – Los Angeles Co., CA*, 9 I.C.C.2d 385, 387-88 (1993) ("SP Abandonment II").

¹ Simultaneously with this Reply, LACMTA is filing a petition to late file a reply to UP's notice of exemption.

For the reasons discussed in detail below, LACMTA opposes the Riffin NOI and Riffin Petition and requests that the instant proceeding be exempt from the requirements governing offers of financial assistance pursuant to 49 U.S.C. §10904 and 49 C.F.R. §1152.27 ("OFAs"), and from the public use requirements of 49 U.S.C. §10905. LACMTA further requests that the Board permit UP's requested exemption to become effective as scheduled as on May 8, 2008. 76 Fed. Reg. 19136 (April 8, 2008).

As a preliminary matter, LACMTA emphasizes that only the 0.08 mile portion of right-of-way comprising the UP Segment is potentially subject to OFA and public use conditions in this proceeding because UP does not have the authority to seek abandonment of the LACMTA Segment and is properly seeking a discontinuance of its trackage rights over the LACMTA Segment. The Board has long held that where a railroad provides common carrier service over a line owned by others, the operator may petition for discontinuance authority and only the owner of the line may request authority to abandon. *SP Abandonment I* at 514. Accordingly, the only portion of the right-of-way in this proceeding that may be subject to OFA and public use conditions is the UP Segment and not the longer LACMTA Segment. Because 49 U.S.C. §10904 does not authorize the "purchase" of a line segment for which an operator seeks to discontinue trackage rights, the OFA Mr. Riffin anticipates submitting would only apply to the UP Segment. See, e.g., *Cent. Ill. RR Co. - Discontinuance of Service Exemption - In Peoria County, IL*, STB Docket No. AB-1066X (Service Date November 21, 2005).

UP has already explained in the UP NOE why the UP Segment is not an appropriate candidate for continued freight service or for public recreation uses. Because the UP Segment is located in an industrialized area with no recreational facilities in the vicinity and is only 0.08 mile (approximately 400 feet) long, it is not suitable for recreational use. Therefore, the right-of-

way is not suitable for any other public use and the Board should exempt the UP NOE from the public use requirements of 49 U.S.C. §10905.

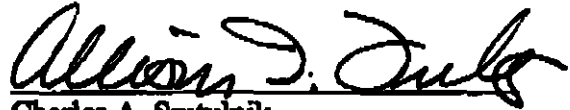
UP confirms in the UP NOE that no overhead or local traffic has moved over the UP Segment in over two years. Accordingly, no existing shippers will be affected by the requested discontinuance. Since there is no service to be preserved on the UP Segment and the extremely short length of the UP Segment makes it highly unlikely that it could be used in connection with the provision of rail transportation service, the Board should exempt the UP NOE from the OFA conditions that would be imposed pursuant to 49 U.S.C. §10904 and 49 C.F.R. §1152.27.

The facts supporting the grant of exemption from OFA and public use conditions are even more compelling in this proceeding than in a previous matter before this Board involving Southern Pacific and LACMTA. There, the Board granted an exemption from OFA and public use requirements for the discontinuance of service by Southern Pacific and abandonment by LACMTA of a 5.21 mile long line of railroad on which the last shipper had received service within the year preceding the discontinuance and abandonment requests. *So. Pac. Trans. Co. – Discontinuance of Service Exemption – In Los Angeles Co., CA*, STB Docket No. AB-12 (Sub-No. 172X), *et al.* (Service Date January 9, 1995), *slip op.* at 3. In the instant proceeding, the segment for which UP seeks abandonment is only 400 feet long and there has been no traffic for over two years. The facts in this proceeding therefore clearly justify an exemption from OFA and public use requirements.

Accordingly, the Board should exempt this proceeding from the imposition of OFA and public use conditions and should deny James Riffin's request to extend time. The exemption should be permitted to become effective on May 8, 2008, as set forth in the notice of exemption published in the Federal Register in this matter on April 8, 2008.

WHEREFORE, LACMTA respectfully requests that the Board exempt this proceeding from the imposition of OFA and public use conditions, deny James Riffin's request to extend time and permit UP's requested exemption to become effective as of May 8, 2008, as scheduled.

Respectfully submitted,



Charles A. Spitulnik

W. Eric Pilsk

Allison I. Fultz

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afultz@kaplankirsch.com

Certificate of Service

I hereby certify that on this 6th day of May, 2008, I caused to be served a copy of the foregoing REPLY of Los Angeles County Metropolitan Transportation Authority to James Riffin's "Notice of Intent to File an Offer of Financial Assistance" and James Riffin's Request for Extension of Time to be served by first class mail, postage prepaid, upon:

Gabriel S Meyer
Union Pacific Railroad Company
1400 Douglas Street Stop 1580
Omaha, NE 68179

James Riffin
1941 Greenspring Drive
Timonium, MD 21093


Allison I. Fultz

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. AB-33 (Sub-No. 265X)

**UNION PACIFIC RAILROAD COMPANY -
ABANDONMENT EXEMPTION
IN LOS ANGELES COUNTY, CA
(SANTA MONICA INDUSTRIAL LEAD)**

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

**PETITION FOR AUTHORIZATION TO LATE FILE A REPLY
and
REPLY TO UNION PACIFIC RAILROAD COMPANY'S
NOTICE OF EXEMPTION**

Communications with respect to this document
should be addressed to:

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LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

**PETITION FOR AUTHORIZATION TO LATE FILE A REPLY
and
REPLY TO UNION PACIFIC RAILROAD COMPANY'S
NOTICE OF EXEMPTION**

On March 19, 2008, Union Pacific Railway Company ("UP") filed a Notice of Exemption in this proceeding (the "UP NOE") seeking an abandonment of service over 0.08 mile of the Santa Monica Industrial Lead from Milepost 485.61 to Milepost 485.69 (the "UP Segment"), and a discontinuance of trackage rights over 0.31 mile of track owned by the Los Angeles County Metropolitan Transportation Authority ("LACMTA"), a public entity, from Milepost 485.69 to Milepost 485.00 (the "LACMTA Segment"), a total distance of 0.39 mile in the City of Los Angeles, Los Angeles County, California.

LACMTA by this petition is requesting authority from the Surface Transportation Board ("STB" or the "Board") to late file a Reply to the UP NOE.¹ As the owner of the LACMTA Segment, LACMTA respectfully requests that it be permitted to enter into this proceeding in

¹ LACMTA is simultaneously submitting with this petition a reply to the "Notice of Intent to File an Offer of Financial Assistance" and "Petition to Toll Date an Offer of Financial Assistance Must be Filed by" submitted by James Riffin on April 16, 2008 in this proceeding

order to ensure that its interests are represented before the Board. LACMTA intends to file a Notice of Exemption pursuant to 49 C.F.R. §1152, Subpart F, in the near future for authority to abandon the LACMTA Segment. LACMTA's proposed Notice of Exemption will relate to LACMTA's 0.31 mile of track, which is the majority of the rail property that is the subject of the instant proceeding. Therefore, there is significant overlap in the facts, issues and regulatory criteria applicable to UP's pending discontinuance exemption and LACMTA's proposed abandonment request. LACMTA accordingly requests the Board's permission to late file a Reply to the UP NOE in order for the Board to take into account the interests of the owner of the LACMTA Segment, over which UP requests discontinuance authority in this proceeding.

REPLY TO UNION PACIFIC RAILROAD COMPANY'S NOTICE OF EXEMPTION

LACMTA's predecessor agency, the Los Angeles County Transportation Commission ("LACTC") acquired the LACMTA Segment from Southern Pacific Transportation Company ("Southern Pacific"), UP's corporate predecessor, in 1990. Southern Pacific retained the exclusive right to provide freight service on the LACMTA Segment. Southern Pacific retained ownership of the UP Segment, and UP subsequently succeeded to Southern Pacific's interest. As a result of the transfer of the LACMTA Segment from Southern Pacific to LACTC (and subsequently LACMTA) acquired the real property associated with the LACMTA Segment, and Southern Pacific retained all operating rights and the primary common carrier obligation. The I.C.C. concluded at the time that LACMTA had acquired a residual common carrier obligation as the owner of the physical assets of the LACMTA Segment, over which service was being provided by Southern Pacific. *So. Pac. Trans. Co. - Abandonment Exemption - Los Angeles*

Co., CA, 8 I.C.C.2d 495, 508 and n.13 (1992) ("SP Abandonment I"), pet. for reconsideration denied, So. Pac. Trans. Co. – Abandonment Exemption – Los Angeles Co., CA, 9 I.C.C.2d 385, 387-88 (1993) ("SP Abandonment II").

LACMTA supports UP's request to discontinue its right to operate over the LACMTA Segment and to abandon the UP Segment. For the reasons discussed in detail below, LACMTA agrees with UP's characterization of the UP Segment with respect to the suitability of the right-of-way for public use and recreational purposes, and requests that the instant proceeding be exempt from the requirements governing offers of financial assistance pursuant to 49 U.S.C. §10904 and 49 C.F.R. §1152.27 ("OFAs"), and from the public use requirements of 49 U.S.C. §10905. LACMTA further requests that the Board permit UP's requested exemption to become effective as scheduled as on May 8, 2008. 76 Fed. Reg. 19136 (April 8, 2008).

As a preliminary matter, LACMTA emphasizes that only the 0.08 mile portion of right-of-way comprising the UP Segment is potentially subject to OFA and public use conditions in this proceeding because UP does not have the authority to seek abandonment of the LACMTA Segment and is properly seeking a discontinuance of its trackage rights over the LACMTA Segment. The Board has long held that where a railroad provides common carrier service over a line owned by others, the operator may petition for discontinuance authority and only the owner of the line may request authority to abandon. *SP Abandonment I* at 508 and n.13; *SP Abandonment II* at 387-88 (1993). Therefore, the LACMTA Segment is not subject to the imposition of any OFA or public use requirements because LACMTA has not yet filed a request to abandon the 0.31 mile section of right-of-way that makes up the LACMTA Segment.

UP has already explained in the UP NOE why the UP Segment is not an appropriate candidate for continued freight service or for public recreation uses. Because the UP Segment is

located in an industrialized area with no recreational facilities in the vicinity and is only 0.08 mile (approximately 400 feet) long, it is not suitable for recreational use. Therefore, the right-of-way is not suitable for any other public use and the Board should exempt the UP NOE from the public use requirements of 49 U.S.C. §10905.

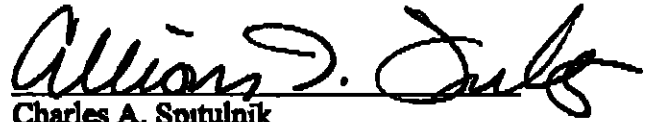
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The facts supporting the grant of exemption from OFA and public use conditions are even more compelling in this proceeding than in a previous matter before this Board involving Southern Pacific and LACMTA. There, the Board granted an exemption from OFA and public use requirements for the discontinuance of service by Southern Pacific and abandonment by LACMTA of a 5.21 mile long line of railroad on which the last shipper had received service within the year preceding the discontinuance and abandonment requests. *So. Pac. Trans. Co. – Discontinuance of Service Exemption – In Los Angeles Co., CA*, STB Docket No. AB-12 (Sub-No. 172X), *et al.* (Service Date January 9, 1995), *slip op.* at 3. In the instant proceeding, the segment for which UP seeks abandonment is only 400 feet long and has seen no traffic for over two years. The facts in this proceeding therefore clearly justify an exemption from OFA and public use requirements.

WHEREFORE, the Los Angeles County Metropolitan Transportation Authority respectfully requests that the Board permit this late-filed Reply to be entered into the record of

the above-captioned proceeding in support of Union Pacific Railroad Company's Notice of Exemption and request for exemption from the requirements of 49 U.S.C. §§10904 and 10905.

Respectfully submitted,



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Allison L. Fultz

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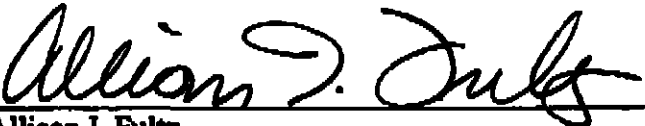
afultz@kaplankirsch.com

Certificate of Service

I hereby certify that on this 6th day of May, 2008, I caused to be served a copy of the foregoing PETITION FOR AUTHORIZATION TO LATE-FILE A REPLY and REPLY TO UNION PACIFIC RAILROAD COMPANY'S NOTICE OF EXEMPTION of Los Angeles County Metropolitan Transportation Authority to be served by first class mail, postage prepaid, upon:

Gabriel S Meyer
Union Pacific Railroad Company
1400 Douglas Street Stop 1580
Omaha, NE 68179

James Riffin
1941 Greenspring Drive
Timonium, MD 21093


Allison I. Fultz